IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-07-2007

CORAM :

THE HONOURABLE MR.JUSTICE A. KULASEKARAN

W.P. No. 13557 and 13558 of 2001
-o-

P.R. Jayaraman .. Petitioner in both the Writ Petitions

Versus

1. The Tamil Nadu Civil Supplies
Corporation Limited
rep. By its Chairman-cum-Managing
Director
No.12, Thambusamy Road
Kilpauk, Chennai - 600 010

2. The Government of Tamil Nadu
rep. By its Secretary to Government
Co-operation, Food and Consumer .. Respondents in
Protection Department both the writ
Secretariat, Chennai - 600 009 petitions

WP No. 13557 of 2001: Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the first respondent in Rc.No.H3/42126/98, dated 29.05.1998 and quash the same and direct the respondents to pay the petitioner all the terminal benefits with interest at 18% per annum from the date of his retirement till the payment.

WP No. 13558 of 2001: Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorari calling for the records of the first respondent in No.G5/56226/98 dated 06.07.2001 and quash the same.

For Petitioner : Mr. Chinnasamy, Senior Advocate
for Mr. Haja Mohideen Gisthi
in both the writ petitions

For Respondents : Mr. G. Senthil Kumar for R1
in both the writ petitions

Mr. S. Gopinathan
Additional Government Pleader for R2
in both the writ petitions

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COMMON ORDER

In both the writ petitions, the petitioner and the respondents are one and the same, besides that the issue involved are identical, hence, they are disposed of by this common order.

2. The petitioner was appointed as Assistant Engineer in public works department in the year 1965, later, he was deputed to the Tamil Nadu Civil Supplies Corporation wherein he was absorbed as Assistant Engineer, in the year 1977, he was promoted as Assistant Executive Engineer and subsequently, in the year 1985, he was promoted as Executive Engineer. Two days prior to his retirement i.e., on 29.05.1998, the first respondent has issued a charge which is challenged in WP No. 13557 of 2001. The charges are:-

> "Charge No.1: that he failed to exercise proper control over his subordinates and failed to extract work from them without any complaints from the public
>
> Charge No.2: that he has failed to see that the bills claimed by the private parties attending to the work of TNCSC are passed smoothly without demanding any illegal gratification from the parties
>
> Charge No.3: that he has failed to maintain absolute integrity, devotion to his duties and responsibilities in discharging his duties
>
> Charge No.4: that he is negligent in discharging his duties and responsibilities and thus brought disrepute to the corporation."

3. On receipt of the charge memo, the petitioner submitted his explanation on 01.06.1998 denying the charges. Thereafter, the first respondent has appointed an enquiry officer, who conducted enquiry and found that none of the charges levelled against him were proved. To that effect, the enquiry officer has filed his report to the first respondent on 06.08.1998. Thereafter, the respondents remained silent and on 06.07.2001, by proceedings dated 06.07.2001, the first respondent informed the petitioner that fresh enquiry would be conducted after observing all essential formalities and procedures, which is challenged in WP No. 13558 of 2001.

4. Mr. Chinnasamy, learned senior counsel appearing for the petitioner submitted that the charges levelled against the petitioner are flimsy, vague and not supported by any evidence; that the enquiry officer, after proper consideration of the same has found that the charges are not proved; that the proceedings dated 06.07.2001 of the first respondent for de-novo enquiry has been issued mechanically and no reason is assigned for the same; that there was a delay of three years from the date of filing of the report by the enquiry officer, which is not properly explained; that in any event, without invalidating the earlier enquiry

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directing to conduct fresh enquiry is unsustainable in law and prayed for allowing of the writ petitions.

5. Mr. Senthil Kumar, learned standing counsel appearing for the first respondent reiterated the contents of the counter and submitted that based on the report received from the Directorate of Vigilance and Anti-corruption department dated 14.05.1998 and also the letter received from the Secretary to Government, Food and Consumer Protection Department dated 29.05.1998, charges memo was issued to the petitioner on 29.05.1998 and he was allowed to retire without prejudice to initiate appropriate departmental action; that based on the lapses pointed out by the Directorate of Vigilance and Anti-corruption Department, four charges were framed against the petitioner under Regulation 4 chapter V of the Tamil Nadu Civil Supply Employees Service Regulation 1989 by the first respondent; that the charge memo was served on the petitioner on 29.05.1998, an enquiry officer was appointed on 16.06.1998 who submitted his report on 05.08.1998 holding that all the charges framed against the petitioner were not proved and that the enquiry report was also served on the petitioner on 10.08.1998 and he was called upon to submit his further explanation; that the petitioner has accepted the enquiry findings and not offered any explanation; that based on the Government letter dated 10.02.2000, disciplinary action was ordered to be taken against the petitioner and the said proposal was placed before the Board for consideration, which was also sent to the Government along with the recommendations of the Board and requested to pass orders on the initiation of departmental action against the petitioner vide letter dated 12.06.2000; that the Government, in their letter dated 04.06.2001 has stated that clear cut charges have not been framed and the departmental enquiry was not conducted in the manner as per the procedure prescribed in para 109 of the Director of Vigilance and Anti Corruption Manual; that in pursuance of the recommendations of the Vigilance and Anti Corruption Department, the first respondent has ordered to conduct fresh enquiry against the petitioner and also to take necessary departmental action against the enquiry officer for irregularities committed by him in conducting the enquiry. It is further pointed out by the learned standing counsel for the first respondent that in view of the fact that charges are not framed as per the procedures established under the Rules and enquiry was not conducted as required, fresh enquiry was rightly ordered to be conducted by the first respondent and prayed for dismissal of the writ petition.

6. This Court carefully considered the argument of the counsel on both sides. In the Order dated 06.07.2001 of the first respondent, it is stated thus:-

> "Thiru. S. Tharmarajan, Senior General Manager (Coordination) and Secretary, Head Office was appointed as Enquiry Officer to conduct domestic enquiry on the charges levelled against Thiru. P.R. Jayaraman, Executive Engineer (now retired) in the reference 3rd read above.

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In the reference 4th read above, Government have directed to conduct enquiry after observing all essential formalities and procedures without omission.

Hence, Thiru. M. Vijayakumar, General Manager (Administration)/District Revenue Officer, Head Office is appointed as enquiry officer to conduct domestic enquiry afresh on the charges levelled against Thiru. P.R. Jayaraman, Executive Engineer (now retired) for the irregularities pointed out in the charge memo issued in the reference 1st read above.

Thiru. S. Ramachandran, Construction Engineer, Head Office is appointed as Management Representative in this case.

The Enquiry Officer is requested to submit his enquiry report in duplicate within 30 days from the date of receipt of this order.

A copy of the instructions issued by the Director of Vigilance and Anti Corruption is also sent herewith (enclosed)."

7. In the said proceedings dated 06.07.2001, it is stated by the first respondent that the Government has directed to conduct enquiry afresh after observing all essential formalities and procedures and informed the petitioner that Mr. M. Vijaya Kumar, General Manager " is appointed as enquiry officer to conduct domestic enquiry afresh on the charges levelled against " the petitioner herein " for the irregularities pointed out in the charge memo " dated 29.05.1998. It is evident that the respondents not decided to issue any fresh charges, though it is mentioned in the counter that " clear cut charges have not been framed " however chosen to proceed for fresh enquiry. Except the contents nothing found in the proceedings dated 06.07.2001. The copy of the letter dated 04.06.2001 of the government was not served to the petitioner nor placed before this Court for consideration. In a particular case, there has been no proper enquiry because of some serious defects has crept into the enquiry or some important witnesses were not available at the time of the enquiry or were not examined for some other reason, the disciplinary authority may ask the enquiry officer or new enquiry officer in case previous enquiry officer not available to record further evidence. In the absence of any provision, it is not open to the disciplinary authority to set aside the previous enquiry. In this context, it is relevant to refer to the decision of the Honourable Supreme Court reported in (K.R. Deb vs. The Collector of Central Excise, Shillong) AIR 1971 Supreme Court 1447 wherein in Para No.13, it was held thus:-

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"13. It seems to us that Rule 15, on the face of it, really provides for the inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9."

8. In this case, nothing whispered in the impugned proceedings dated 06.07.2001 about the validity or otherwise of the earlier enquiry besides that the earlier enquiry report was not set aside and no service rule is relied on by the respondents to justify the fresh enquiry. It is relevant to look into the decision of a Division Bench of this Court dated 29.01.2007 passed in WP No. 40458 of 2002 wherein in Para No.13, it was held thusZ:-

"13. It is settled proposition of law that mere irregularity in the enquiry report is not sufficient for ordering 'de novo' enquiry and the sine quo nan or pre condition required for ordering 'de novo' enquiry are:

(1) The authority ordering 'de novo' enquiry must be empowered with the power of setting aside the enquiry report, submitted by the enquiry officer and the order passed by disciplinary authority, either as appellate or revisional authority.

(2) Further, to order 'de novo' enquiry, there should be patent irregularity or illegality in the earlier enquiry report submitted by the enquiry officer, and

(3) Without setting aside the earlier report, based on adequate reasoning, 'de novo' enquiry cannot be ordered by the authority."

9. In this case, the respondents have admitted that clear cut charges have not been framed, hence, when the charges are vague, making the petitioner to suffer again by subjecting him to disciplinary proceedings cannot be permitted.

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10. In this background, it is necessary to point out that the enquiry officer originally appointed by the respondents has submitted his report dated 06.08.1998 finding that the charges against the petitioner were not proved. The impugned proceedings dated 06.07.2001 was issued by the first respondent after lapse of about three years. The petitioner has already retired from service, hence, no useful purpose will be served in directing to conduct fresh enquiry. It is also to be remembered that two days prior to the superannuation of the petitioner i.e., 31.05.1998, the charge memo dated 29.05.1998 was issued by the first respondent.

11. As rightly pointed out by the learned senior counsel for the petitioner, the delay of three years in issuing the impugned proceedings dated 06.07.2001 is not properly explained by the respondents. It is also evident from the above said order that only one thing is repeatedly mentioned that as per the instructions of the Government fresh enquiry is ordered, which is not a valid reason.

12. In view of the above said discussions, this Court can come to only one conclusion that the impugned proceedings dated 06.07.2001, which is the subject matter of WP No. 13558 of 2001 is unsustainable in law, hence, the same is quashed. The first respondent has admitted that clear cut charges have not been framed against the petitioner, hence, the charge memo dated 29.05.1998 is also quashed.

11. In the result, the writ petitions are allowed. No costs. rsh

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Chairman-cum-Managing
   Director
   Tamil Nadu Civil Supplies
   Corporation Limited
   No.12, Thambusamy Road
   Kilpauk, Chennai - 600 010

2. The Secretary to Government of
   Tamil Nadu
   Co-operation, Food and Consumer
   Department
   Secretariat, Chennai - 600 009

+ 2cc to Mr. S. Haja Mohideen Gisthi, Advocate sr nos. 43773 44462
+ 2cc to Mr. G. Senthil kumar, Advocate sr nos. 44361, 44362
+1cc to the Government Pleader sr no. 44116

BS(CO)
NM(25.07.07)

WP NoS. 13557 & 13558/2001

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